

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2005-0037
MANDATORY MINIMUM PENALTIES
IN THE MATTER OF
C&H SUGAR COMPANY
CROCKETT, CONTRA COSTA COUNTY

This Complaint assessing Mandatory Minimum Penalty (MMP) pursuant to California Water Code Sections 13385(h) and 13385(i) is issued to C&H Sugar Company (hereinafter Discharger) based on a finding of ten effluent violations of Order No. 00-025, NPDES Permit No. CA0005240.

The Executive Officer finds the following:

1. On April 19, 2000, the Regional Water Quality Control Board (Water Board) adopted Order No. 00-025 for the Discharger, to regulate discharges of waste from the Discharger's sugar refinery and the biological wastewater treatment plant (treatment plant).
2. In 1976 the Discharger entered into a Joint-Use Agreement with the Crockett-Valona Sanitary District (CVSD) for the joint use of the treatment plant. According to the agreement provisions, the Discharger assumed, and continues to assume, full responsibility for the operation and maintenance of the treatment plant to produce an effluent in compliance with the applicable NPDES permit, and CVSD shares the equipment cost and reimburses the Discharger a portion of the operational and maintenance cost.
3. Order No. 00-025 prohibits the discharge of effluent containing the following pollutants with concentrations exceeding the applicable effluent limitations:

Pollutant/Parameter (unit)	Effluent Limit
Mercury monthly average (ug/L)	0.21
Biochemical Oxygen Demand (BOD) daily maximum lb/day	$6688 + [(60 \text{ mg/l}) \times (\text{CVSD Flow in MGD}) \times (8.34)]$
BOD monthly average lb/day	$2417 + [(30 \text{ mg/l}) \times (\text{CVSD Flow in MGD}) \times (8.34)]$
Total coliform 5-sample median/ MPN/100 mL	240

4. The Discharger submitted self-monitoring reports as listed in the table on the next page documenting exceedances of the permit limits. During the period between September 28, 2004, and June 7, 2005, the Discharger had ten violations of its effluent limits. These violations are: two mercury monthly average violations, three BOD daily maximum limit violations, three BOD monthly average limit violations, and two total coliform 5-sample

median limit violations. The details of these limit violations are summarized in the table below:

Item No.	Report Date	Sampling or calculation Date	Description of Exceeded Pollutant or Parameter	Sample or Calculated Result	NPDES Permit Effluent Limit for the pollutant or parameter	CVSD Flow in MGD for BOD limit calculation	BOD limit calculation
1	10/22/2004	9/28/2004	Mercury Monthly Average, ug/L	0.265	0.21	NA	NA
2	11/24/2004	10/31/2004	Mercury Monthly Average, ug/L	0.496	0.21	NA	NA
3	12/29/2004	11/9/2004	BOD daily maximum, lb/day	10135	6928	0.48	$6688 + 60 \times 0.48 \times 8.34 = 6928$
4	12/29/2004	11/30/2004	BOD monthly average, lb/day	4252	2485	0.27	$2417 + 30 \times 0.27 \times 8.34 = 2485$
5	2/28/2005	1/27/2005	BOD daily maximum, lb/day	13255	7283	1.19	$6688 + 60 \times 1.19 \times 8.34 = 7283$
6	2/28/2005	1/31/2005	BOD monthly average, lb/day	3425	2535	0.47	$2417 + 30 \times 0.47 \times 8.34 = 2535$
7	6/27/2005	5/25/2005	BOD daily maximum, lb/day	21866	6898	0.42	$6688 + 60 \times 0.42 \times 8.34 = 6898$
8	6/27/2005	5/31/2005	BOD monthly average, lb/day	5519	2495	0.31	$2417 + 30 \times 0.31 \times 8.34 = 2495$
9	7/27/2005	6/6/2005	Total coliform 5-sample median, MPN/100 mL	350	240	NA	NA
10	7/27/2005	6/7/2005	Total coliform 5-sample median, MPN/100 mL	350	240	NA	NA

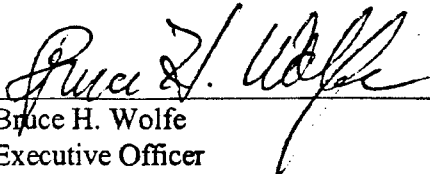
5. Water Code Section 13385(h)(1) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each serious violation.
6. Water Code Section 13385(h)(2) defines "serious violation" as any waste discharge of a Group I pollutant that exceeds the effluent limitation contained in the applicable waste discharge requirements by 40 percent or more, or any waste discharge of a Group II pollutant that exceeds the effluent limitation by 20 percent or more.
7. Water Code Section 13385(i)(1) requires the Water Board to assess an MMP of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any six consecutive months:
 - a. Violates a waste discharge requirement effluent limitation.
 - b. Fails to file a report pursuant to Section 13260.
 - c. Files an incomplete report pursuant to 13260.
 - d. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
8. The assessment data for the violations listed in the finding above are summarized in the attached Table 1, which is incorporated herein by reference, and described in the following findings:
 - a. Mercury is a Group II pollutant. The first two mercury violations (items 1 and 2 in Table 1) exceed the effluent limitation by 20 percent. Therefore, these

violations are subject to a \$6,000 MMP under Water Code Section 13385(h) as serious violations.

- b. BOD is a Group I pollutant. The five violations (items 3, 4, 5, 7, and 8 in Table 1) exceed the effluent limitation by 40 percent. Therefore, these violations are subject to a \$15,000 MMP under Water Code Section 13385(h) as serious violations. The BOD monthly average for the month of January 2005 (Item 6 in Table 1) does not exceed the effluent limitation by 40 percent. However, since the Discharger reported at least four effluent limits violations during the six consecutive months before January 2005, the item 6 violation is also subject to a \$3,000 MMP under Water Code Section 13385(i)(1) (also known as chronic violation). The total BOD MMP amount is \$18,000.
 - c. The last two total coliform violations (items 9 and 10 in Table 1) are also subject to an MMP since the Discharger reported at least four effluent limits violations during the six consecutive months before June 6 and June 7, 2005, respectively. Therefore the two total coliform violations are subject to a \$6,000 MMP under Water Code Section 13385(i)(1) as chronic violations.
 - d. Water Code Section 13385(j) provides some exceptions related to the assessment of an MMP for effluent limit violations. None of the exceptions apply to the violations cited in this Complaint.
 - e. All ten of the violations listed in Table 1 are subject to an MMP. The total MMP amount is \$30,000.
9. Water Code Section 13385(l) allows the Water Board, with the concurrence of the discharger, to direct a portion of the MMP amount to be expended on a supplemental environmental project (SEP) in accordance with the enforcement policy of the State Water Resources Control Board. The Discharger may undertake an SEP for up to the full amount of the MMP for liabilities less than or equal to \$15,000. If the MMP amount exceeds \$15,000, the maximum MMP amount that may be expended on an SEP may not exceed \$15,000 plus 50 percent of the MMP amount that exceeds \$15,000.
10. Instead of paying the full penalty amount to the State Water Pollution Cleanup and Abatement Account, the Discharger may spend an amount up to \$22,500 on an SEP acceptable to the Executive Officer. Any such amount expended to satisfactorily complete an SEP will be permanently suspended.
11. If the Discharger chooses to propose an SEP, the proposed SEP shall be in the following categories:
 - a. Pollution prevention;
 - b. Pollution reduction;
 - c. Environmental clean-up or restoration; and
 - d. Environmental education.

THE C&H SUGAR COMPANY IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer proposes that the Discharger be assessed an MMP in the total amount of \$30,000.
2. The Water Board will hold a hearing on this Complaint on November 16, 2005, unless the Discharger waives the right to a hearing by signing the last page of this Complaint and checks the appropriate box. By doing so, the Discharger agrees to:
 - a. Pay the full MMP of \$30,000 within 30 days after the signed waiver becomes effective, or
 - b. Propose an SEP in an amount up to \$22,500 and pay the balance of the penalty within 30 days after the signed waiver becomes effective. The sum of the SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$30,000.
3. If the Discharger chooses to propose an SEP, the Discharger shall submit a preliminary proposal by October 14, 2005, to the Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002. If the proposed SEP is not acceptable to the Executive Officer, the Discharger has 30 days from receipt of notice of an unacceptable SEP to either submit a new or revised proposal, or make a payment for the suspended amount. All payment, including any money not expended for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account. Regular reports on the SEP implementation shall be provided to the Executive Officer according to a schedule to be determined. The completion report for the SEP shall be submitted to the Executive Officer within 60 days of project completion.
4. The signed waiver becomes effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Water Board will consider whether to affirm, reject, or modify the proposed penalty, or whether to refer the matter to the Attorney General for recovery of the civil liability.


Bruce H. Wolfe
Executive Officer

SEP 1 5 2005

Date

WAIVER

(The signed waiver will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.)

- ☐ Waiver of the right to a hearing and agree to make payment in full.
By checking the box, I agree to waive my right to a hearing before the Board with regard to the violations alleged in Complaint No. R2-2005-0037 and to remit the full penalty payment to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Oakland, CA 94612, within 30 days after the signed waiver becomes effective as indicated above. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed.
- ☒ Waiver of right to a hearing and agree to make payment and undertake an SEP.
By checking the box, I agree to waive my right to a hearing before the Board with regard to the violations alleged in Complaint No. R2-2005-0037 and I agree to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to \$22,500. I also agree to remit payment of the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the signed waiver becomes effective. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 19, 2002, and be subject to approval by the Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Executive Officer, I agree to pay the suspended penalty amount for the SEP within 30 days of the date of the letter from the Executive Officer denying the approval of the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

J A Warfield
Name (print)

J A Warfield
Signature

10/12/05
Date

V.P. Operations
Title/Organization

Table 1: Violations Summary (September 2004 - June 2005)

Item No.	Date	Pollutant	Effluent Limit	Group II Effluent Limit + 20%	Group I Effluent Limit + 40%	Effluent Value	Mandatory Minimum Penalty for a WC Section 13385(h)(1) (Serious) Violation/\$	Mandatory Minimum Penalty for a WC Section 13385(i)(1) (Chronic) Violation/\$	8/4/2004 is the start date of 180 days period for Item 6 violation	12/8/2004 and 12/9/2004 are the respective start dates of 180 days periods for Items 9 and 10 violations
1	9/28/2004	Hg Monthly Average, ug/L	0.21	0.252		0.265	\$3,000		First Violation	
2	10/31/2004	Hg Monthly Average, ug/L	0.21	0.252		0.496	\$3,000		Second Violation	
3	11/9/2004	BOD daily maximum, lb/day	6928		9699	10135	\$3,000		Third Violation	
4	11/30/2004	BOD monthly average, lb/day	2485		3478	4252	\$3,000		Fourth Violation	
5	1/27/2005	BOD daily maximum, lb/day	7283		10197	13255	\$3,000		Fifth Violation	First Violation
6	1/31/2005	BOD monthly average, lb/day	2535		3548	3425		\$3,000	Sixth Violation	Second Violation
7	5/25/2005	BOD daily maximum, lb/day	6898		9657	21866	\$3,000			Third Violation
8	5/31/2005	BOD monthly average, lb/day	2495		3492	5519	\$3,000			Fourth Violation
9	6/6/2005	Total coliform 5-sample median, MPN/100 mL	240			350		\$3,000		Fifth Violation
10	6/7/2005	Total coliform 5-sample median, MPN/100 mL	240			350		\$3,000		Sixth Violation
Mandatory Minimum Penalty for Seven Serious Violations/\$							\$21,000			
Mandatory Minimum Penalty for Three Chronic Violations/\$								\$9,000		
Total Mandatory Minimum Penalty for Ten Violations/\$								\$30,000		
Notes: Previous enforcement actions are Complaint Nos. R2-2004-0067 and R2-2002-0005, and ACL R2-2002-0016. Other information for Order No. 00-025, NPDES Permit No. CA 0005240: WDID 2 071006001 and File No. 2119.1006										